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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 KRZYSZTOF F. WOLINSKI,

12 Plaintiff,

13 v.

14 KERRI M. LAMAS, et al.,

15 Defendants.
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No. 2:23-CV-1467-DJC-DMC-P

FINDINGS AND RECOMMENDATIONS

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42
18 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint. See ECF No. 1.

19 On January 19, 2024, the Court issued an order screening Plaintiff's original
20 complaint. See ECF No. 12. The Court determined that Plaintiff states cognizable claims as
21 follows: (1) First Amendment claim against that Defendants Lamas and Pender based on alleged
22 retaliatory conduct (first claim); (2) Eighth Amendment claims against Defendants Butterfield,
23 Singh, Lamas, and Schultz arising from the alleged use of excessive force on January 25, 2022
24 (second claim); and (3) Eighth Amendment medical care claims against Defendants Tran, Osmon,
25 and Nandy (third claim). See id. The Court otherwise determined that Plaintiff fails to allege
26 facts to sustain a claim against Defendant Berumen. See id. The Court also determined that
27 Plaintiff fails to state a claim against any defendant based on violation of due process arising from
28 a prison disciplinary proceeding. See id. Plaintiff was provided an opportunity to file a first

1 amended complaint within 30 days and cautioned that, if he failed to do so, the Court would
2 direct service of the original complaint on the defendants/claims outlined above and recommend
3 dismissal of Defendant Berumen and Plaintiff's due process claim. See id. To date, Plaintiff has
4 not filed a first amended complaint. By separate order the Court has directed service and now
5 recommends dismissal of Defendant Berumen and Plaintiff's due process claim consistent with
6 the Court's prior screening order.

7 Accordingly, the undersigned recommends as follows:

- 8 1. This action proceed on the following claims:
 - 9 a. First Amendment claim against that Defendants Lamas
10 and Pender based on alleged retaliatory conduct (first
11 claim).
 - 12 b. Eighth Amendment claims against Defendants Butterfield,
13 Singh, Lamas, and Schultz arising from the alleged use
14 of excessive force on January 25, 2022 (second claim).
 - 15 c. Eighth Amendment medical care claims against
16 Defendants Tran, Osmon, and Nandy (third claim).
- 17 2. All claims against Defendant Berumen be DISMISSED.
- 18 3. Plaintiff's due process claim be DISMISSED.

19 These findings and recommendations are submitted to the United States District
20 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
21 after being served with these findings and recommendations, any party may file written objections
22 with the Court. Responses to objections shall be filed within 14 days after service of objections.
23 Failure to file objections within the specified time may waive the right to appeal. See Martinez v.
24 Ylst, 951 F.2d 1153 (9th Cir. 1991).

25 Dated: March 14, 2024

26 
27 DENNIS M. COTA
28 UNITED STATES MAGISTRATE JUDGE